STATE OF MICHIGAN

COURT OF APPEALS

TODD MOTUELLE,

Plaintiff-Appellant,

v

GARY RUFFINI, CHERYL HARTWELL, and LYNN RIED,

Defendant-Appellees.

UNPUBLISHED
June 8, 2004

No. 244557
Cass Circuit Court
LC No. 01-000389-NZ

Before: Gage, P.J., and O'Connell and Zahra, JJ.

PER CURIAM.

Plaintiff, who brought this suit after being denied certification as a law enforcement officer, appeals as of right from an order granting defendants' motion for summary disposition. We affirm.

I. Facts and Procedure

In August 1998, plaintiff enrolled in the Kalamazoo Valley Community College/Police Academy (Kalamazoo Police Academy) as an in-service recruit sponsored by Howard Township. Before attending the academy, plaintiff made a donation of $6,773.16 to Howard Township to offset the costs of his attendance in the academy. After the Michigan Commission on Law Enforcement Standards (COLES) received a complaint that plaintiff had improperly paid Howard Township to sponsor him at the academy, defendant Ried, a supervisor in the standard compliance unit of the COLES, interviewed plaintiff twice regarding the matter. Ried subsequently issued a report recommending to deny plaintiff's law enforcement officer certification, because plaintiff had donated money to Howard Township after he was selected to be in the academy and because he lied at the interviews when he was asked if he had made such a donation. The report also indicated that plaintiff had falsified an COLES form whereby he acknowledged that he had not entered into or signed any contractual agreement that would obligate him to violate the Fair Labor Standards Act (FLSA), 29 USC 201 *et seq.* On February 18, 1999, the COLES issued an ex parte order advising plaintiff that he was not eligible for law enforcement certification, because his enrollment into the Kalamazoo Police Academy was not consistent with COLES administrative rules requiring him to possess good moral character and be an "employed recruit" under the FLSA.

Plaintiff pursued administrative relief against the COLES, and an administrative hearing was held before an COLES hearing officer. In a written opinion, the hearing officer determined that plaintiff and Howard Township had a quid pro quo arrangement that involved plaintiff's $6,773.16 donation and that plaintiff's donation was made for the purpose of reimbursing the township for the cost of his tuition for the Kalamazoo Police Academy. The hearing officer concluded that plaintiff was properly denied certification to be a law enforcement officer because, after subtracting plaintiff's $6,773.16 donation from his salary for being an in-service recruit, plaintiff was not making minimum wage and was therefore not "employed" as defined by COLES Rules 28.4351(1)(h) and 28.4101(1)(g). The hearing officer determined that plaintiff was properly dismissed from the academy under COLES Rule 28.4365(3)(a), which provides:

> The failure of an employed recruit to do either of the following is cause for dismissal:
>
> (a) Maintain employment with a law enforcement agency during the basic police training program.

Because plaintiff did not maintain "employment" at the Howard Township Police Department, his enrollment at the Kalamazoo Police Academy was not valid. The hearing officer declined to reach a conclusion whether plaintiff was properly denied certification for lacking good moral character.

Plaintiff appealed the hearing officer's opinion to the Ingham Circuit Court, arguing that the COLES's rule prohibiting in-service police recruits from paying their tuition was inconsistent with federal law. Plaintiff argued that the FLSA does not require an in-service recruit to receive at least minimum wage payment, and the COLES's interpretation of the FLSA was arbitrary and caparicious. Plaintiff further argued that the hearing officer's opinion was not supported by competent, material, and substantial evidence.

The circuit court affirmed the hearing officer's opinion. First, the circuit court determined that there was sufficient evidence to support the hearing officer's findings of fact. Second, the circuit court determined that the controlling legal issue was whether plaintiff offered to work for less than the minimum wage and that, because plaintiff had pre-paid Howard Township an amount calculated to equal his salary plus tuition, plaintiff was, in effect, offering to work for free. The court concluded that this arrangement violated COLES Rules 28.4351(1)(h), 28.4101(1)(g), and 28.4365(3)(a), and that these administrative rules were supported by a rational basis.[1]

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[1] The parties later stipulated to dismiss with prejudice a complaint plaintiff had filed in the Michigan Court of Claims against the State of Michigan, the COLES, and the COLES's executive director, John Courie, in his official capacity. Plaintiff had filed this complaint before the administrative hearing and before the hearing officer had issued his opinion. In this complaint, plaintiff had argued that, by denying his certification to be a law enforcement officer through unlawful policy and practice, the defendants had violated 42 USC 1983 and had denied him his constitutional rights to property and procedural due process. Plaintiff had sought an

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Plaintiff subsequently filed the complaint in the instant case with the Cass Circuit Court, alleging that defendants falsely reported that plaintiff denied making a donation to Howard Township at the second COLES interview and that defendants' false statements caused the COLES to deny his certification to be a law enforcement officer. Plaintiff alleged procedural and substantive due process violations, liberty interest violations, intentional tortious interference with a business relationship, and claims for punitive damages.[2] The circuit court granted defendants' motion for summary disposition under MCR 2.116(C)(7) and (10), concluding first that plaintiff's claims were barred by res judicata and collateral estoppel. The court also concluded that defendants were protected by the doctrine of qualified immunity and that plaintiff failed to state a claim regarding a constitutional violation or an interference with plaintiff's business relationship.

II. Analysis

A. Standard of Review

We review de novo a trial court's ruling regarding a motion for summary disposition. *Van v Zahorik*, 460 Mich 320, 326; 597 NW2d 15 (1999). Similarly, the applicability of the doctrine of res judicata is a question of law that we review de novo. *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 379; 596 NW2d 153 (1999). The trial court granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(7) and (C)(10). Because summary disposition is appropriate under MCR 2.116(C)(7) where a claim is barred because of prior judgment or other disposition of the claim before commencement of the action, the trial court's grant of defendants' motion for summary disposition on res judicata grounds was pursuant to this subrule. In considering a motion under MCR 2.116(C)(7), the court may consider all affidavits, pleadings, and other documentary evidence, construing them in the light most favorable to the nonmoving party. *Alcona Co v Wolverine Environmental Production, Inc*, 233 Mich App 238, 246; 590 NW2d 586 (1998).

B. Discussion

Plaintiff asserts that the circuit court erred in determining that his claims against defendants were barred by the doctrine of res judicata. Res judicata bars any subsequent action when the following elements are satisfied: "(1) the prior action was decided on the merits; (2) the decree in the prior action was a final decision; (3) the matter contested in the second case was or could have been resolved in the first; and (4) both actions involved the same parties or their privies." *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 10-11; 672 NW2d 351 (2003).

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order requiring the COLES to certify him as a police officer and monetary damages under 42 USC 1983, 42 USC 1988, and MCR 3.207.

[2] Defendants removed the case to federal court based on plaintiff's constitutional claims and that he sought redress under federal law. However, the federal district court remanded the case to the circuit court based on a finding that it lacked subject matter jurisdiction over plaintiff's claims.

Plaintiff does not dispute that the Ingham Circuit Court reached a final decision on the merits or that the Ingham Circuit Court proceedings (the previous action) involved the same facts and transaction as the present action. Instead, plaintiff essentially argues that the doctrine of res judicata does not apply because the claims in the present case were not and could not have been resolved in the previous action, because the previous action was against a governmental agency and the present action is against the employees of the agency in their individual capacities.

Plaintiff first argues that, because respondeat superior liability does not apply to a governmental entity based on its employees' conduct under either state tort theories or civil rights actions, he could not have brought the claims he presently brings against the individual employees in the previous action against the COLES. We disagree. First, under the doctrine of respondeat superior, a governmental agency *can* be held vicariously liable for the actions of an individual employee where the employee acted during the course of his employment and within the scope of his authority. *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 623-624; 363 NW2d 641 (1984). Second, even if the COLES is not liabible for defendants' conduct under the doctrine of respondeat superior, plaintiff cites no case law supporting his position that this lack of liability would require the conclusion that defendants are not privies to the COLES.

We also reject plaintiff's argument that defendants were not privies to the COLES. In *Peterson Novelties, Inc, supra* at 12-13, this Court explained the related privity requirement in the context of the doctrine of res judicata:

> The parties to the second action need be only substantially identical to the parties in the first action, in that the rule applies to both parties and their privies. *In re Humphrey Estate*, 141 Mich App 412, 434; 367 NW2d 873 (1985). As to private parties, a privy includes a person so identified in interest with another that he represents the same legal right, such as a principal to an agent, a master to a servant, or an indemnitor to an indemnitee. *Viele v DCMA*, 167 Mich App 571, 580; 423 NW2d 270, mod 431 Mich 898 (1988), after remand 211 Mich App 458; 536 NW2d 276 (1995). . . . In order to find privity to exist between a party and non-party, Michigan courts require "both a substantial identity of interests and a working or functional relationship . . . in which the interests of the non-party are presented and protected by the party in the litigation." *Phinisee v Rogers*, 229 Mich App 547, 553-554, 582 NW2d 852 (1998) (quotations omitted).

Here, the COLES and defendants had an employer-employee relationship. Plaintiff's suit against defendants involves defendants' conduct while in performance of their duties as COLES employees. Defendants' interests as employees were presented and protected in plaintiff's suit against the COLES, which involved the same set of facts. Therefore, the trial court properly considered defendant to be in privity with the COLES. See *Peterson Novelties, Inc, supra* at 14 n 10.[3]

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[3] Plaintiff also argues that there is no mutuality between the parties because defendants would not be precluded from defending the constitutionality of their individual conduct in the present
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Next, plaintiff contends that the claims he brought in the previous action were against the defendants in their official capacities, so they differ from the claims brought in the present case, which are against defendants in their individual capacities. Plaintiff argues that, because the COLES could not be liable for the claims he alleges in the present action, he could not have brought the present claims in the previous action against the COLES. However, plaintiff misunderstands the nature of res judicata. Even assuming that plaintiff correctly states that his claims in the present action could not have succeeded against the COLES, "Michigan law defines res judicata broadly to bar litigation in the second action not only of those claims actually litigated in the first action, but claims arising out of the same transaction which the parties, exercising reasonable diligence, could have litigated but did not." *Id.* at 11. If the same facts or evidence would sustain both the previous action and the subsequent action, they are the same for purposes of res judicata. *Id.* Here, plaintiff makes no attempt to show that the present action involves a different set of facts or evidence than the previous action. Nor does plaintiff argue that, exercising reasonable diligence, he could not have previously brought the claims that he now alleges against defendants. Plaintiff could have included Ruffini, Hartwell, and Ried as defendants in his previous suit against the COLES. Instead, plaintiff advanced separate theories in separate suits before two different courts for one common set of facts. This is precisely the situation that the doctrine of res judicata seeks to discourage. *Wilkins v Jakeway*, 183 F3d 528, 535 (CA 6, 1999).[4]

In conclusion, the trial court did not err in concluding that plaintiff's claims are barred by the doctrine of res judicata. The trial court properly granted defendants' motion for summary disposition under MCR 2.116(7).[5]

Affirmed.

/s/ Hilda R. Gage
/s/ Peter D. O'Connell
/s/ Brian K. Zahra

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suit if the COLES had been found to have violated plaintiff's civil rights in the previous action. "'[M]utuality of estoppel requires that in order for a party to estop an adversary from relitigating an issue that party must have been a party, or in privy to a party, in the previous action. In other words, "[t]he estoppel is mutual if the one taking advantage of the earlier adjudication would have been bound by it, had it gone against him."'" *Monat v State Farm Ins Co*, ___ Mich ___; ___ NW2d ___ (2004) (Docket No. 121122, decided April 22, 2004), slip op at 6-7. However, in *Monat, supra* at 15, our Supreme Court held that mutuality is not required where collateral estoppel is being "asserted defensively to prevent a party from relitigating an issue that such party has already had a full and fair opportunity to litigate in a prior suit." Because defendants are using res judicata defensively to prevent relitigation, mutuality is similarly not required in the present case.

[4] In light of our conclusion that plaintiff's present claims are barred by the doctrine of res judicata because of the disposition of the Ingham Circuit Court case, we need not determine whether plaintiff's present claims are also barred by the doctine of res judicata because of his voluntarily dismissed Court of Claims action.

[5] In light of our disposition above, we need not address plaintiff's other issues on appeal.